

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

| | | |
|---------------------------------------|---|-----------------------|
| JEFF BARKER, Personal Representative |) | |
| of the Estate of Bobby Glen Barker, |) | |
| a/k/a Bobby G. Barker, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. CIV-07-586-D |
| |) | |
| MURPHY FARMS, L.L.C., <i>et al.</i> , |) | |
| |) | |
| Defendants. |) | |

ORDER

Before the Court is Defendant Murphy Farms, L.L.C.'s Motion for Attorney Fees [Doc. 17], pursuant to Fed. R. Civ. P. 37(a)(5)(A) and (b)(2)(C), filed on March 13, 2008. Defendant requests a fee award in the amount of \$1,750.00 due to Plaintiff's failure to cooperate in discovery and failure to comply with the Order of January 16, 2008, compelling discovery. Plaintiff has not timely responded to the motion.

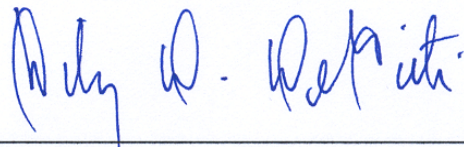
Plaintiff's total failure to prosecute this action after the entry of a scheduling order – by not conducting discovery, complying with deadlines, responding to motions, or obeying court orders – has already resulted in the dismissal of his case without prejudice to refile. *See* Order 3/14/08 [Doc. 18], Judgment [Doc. 19]. The issuance of an order requiring Plaintiff to pay Defendant the amount of attorney fees incurred in filing its motion to compel and motion for dismissal is within this Court's discretionary power.¹ Under the circumstances of this case, the Court determines that an additional sanction is necessary and appropriate to penalize and deter the abuse of the discovery

¹ Defendant asserts it is entitled to such an award based on provisions of Rule 37 stating a court "must" order the payment of reasonable expenses caused by the recalcitrant party. *See* Fed. R. Civ. P. 37(a)(5)(A), (b)(2)(C). Rule 37 further states that an order for payment of expenses is "[i]nstead of or in addition to" other sanctions. *See* Fed. R. Civ. P. 37(b)(2)(C).

process, which are the purposes served by an award of fees under Rule 37. *See Diaz v. Romer*, 961 F.2d 1508, 1512 (10th Cir. 1992); *see also National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 643 (1976). Having reviewed the affidavits and materials attached to Defendant's motion, the Court finds that the attorney fees sought in the amount of \$1,750.00 are reasonable.

IT IS THEREFORE ORDERED that Defendant's motion for attorney fees [Doc. No. 17] is GRANTED. The Court orders an award of attorney fees in the amount of \$1,750.00 to Defendant Murphy Farms, L.L.C., to be paid by Plaintiff Jeff Barker, Personal Representative of the Estate of Bobby Glen Barker.

IT IS SO ORDERED this 22nd day of April, 2008.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE